IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7908 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESH @ DUNI SAVABHAI NADIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7908 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 20/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. MR Prajapati for the petitioner detenu and ld. AGP Ms. HB Punani for the

respondent State.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 16.06.2004 passed by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate for recording subjective satisfaction and passing the order of preventive detention, in reference to the Scheme of Sec.3 R/w 9(1) of the PASA Act, the detaining authority -Police Commissioner, Ahmedabad City has taken into account the fact of registration of three different criminal offences punishable under The Bombay Prohibition Act. On all the three occasions, the petitioner detenu was involved in the illegal activities with connection with country-made liquor between 26.06.2003 and 01.05.2004 i.e. within a span of 10/11 months. No formal statements of witnesses claiming privilege is recorded in the present case, but in view of the frequency of the offence, practically in the same area, the order of detention is passed.

4. The order of detention is challenged on various grounds mentioned in the petition. However, ld. counsel Mr.Prajapati appearing for the detenu has challenged the legality and validity of the order mainly on two grounds. The first ground pressed into service is that the order of detention under challenge is passed in hot haste and there was no need to pass such order because at the relevant date of passing of the order of detention, the petitioner detenu was in judicial custody. The sponsoring authority ought not to have placed even papers for obtaining the order of preventive detention. The grounds for passing preventive detention order conveyed to the detenu clearly reveal the fact of the petitioner detenu in judicial custody was very well there before the detaining authority and the same is reflected in the grounds. So, it is rightly argued by ld. counsel appearing for the petitioner that since the detenu was in judicial custody, the order of detention was not warranted. This Court has turned down such orders in more than one cases and in support of her submission, ld. counsel Mr. Prajapati has placed reliance on the

decision in the case of Amritlal & Ors. v/s Union Govt. through the Secretary, Ministry of Finance & Ors, reported in AIR 2000 SC 3675. I have gone through the cited decision and in my view, the ratio propounded in the cited decision would squarely apply to the facts of the present case and on this ground also, the impugned order of detention requires to be quashed and set aside.

5. In number of cases, this Court has consistently placed reliance on the ratio of the decision in the case of Amrutlal & Others v/s Union of India, Through Secretary, Ministry of Finance & Ors., AIR 2000 SC 3675 and has quashed the order of detention where detenu on the date of passing and/or execution of detention order, was either in judicial or in police custody. The reason that there is "likelihood to be released on bail", is different from "likelihood of his moving application for bail". In the cited decision, detenu was in custody. In these facts and circumstances, ratio of the decision in the case of Vinod Singh V/s District Magistrate, Dhanbad, AIR 1986 SC 2090 also would help the present petitioner-detenu. So, on this sole ground, impugned order of detention requires to be quashed.

6. The next ground pressed into service by ld. counsel appearing for the petitioner detenu is that this is a case of clear delay in dealing with the representation made by the detenu. In the instant case, representation dated 23.06.2004 was despatched to the concerned authority on 24.06.2004, but it appears from the communication received by the detenu through jail on 19.09.2004 that representation was decided on 13.07.2004 i.e. after a period of about 19 days. This delay is not explained reasonably. So, in view of the ratio of the decision of the Apex Court in the case of Harish Pahwa v/s State of U.P., AIR 1981 SC 1126, the impugned order of detention also requires to be quashed on the ground of delay in communicating decision on the representation to the detenu promptly. Relevant observations of the Apex Court are reproduced as under:-

> "..... We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty

> of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This is not having been done in the present case we have no option but to declare the detention unconstitutional."

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 16.06.2004, passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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